

HOUSE BILL NO. 22

INTRODUCED BY MCNUTT

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE FINDINGS AND PURPOSE OF IMPLEMENTING A WATER ADJUDICATION FEE; PROVIDING BENCHMARKS AND ACTION, INCLUDING ELIMINATION OF THE FEE, THAT MUST BE TAKEN IF BENCHMARKS ARE NOT MET BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ~~REQUIRING~~ ALLOWING THE REEXAMINATION, PRIOR TO THE ISSUANCE OF A FINAL DECREE, OF ~~IRRIGATION~~ CLAIMS IN BASINS THAT WERE VERIFIED; DEFINING "OWNER" FOR PURPOSES OF THE WATER ADJUDICATION FEE; ESTABLISHING WATER ADJUDICATION FEES; PROVIDING THAT THE FEE DOES NOT APPLY TO FEDERAL WATER RIGHTS AND INDIAN RESERVED AND ABORIGINAL CLAIMS TO WATER; PROVIDING THAT THE DEPARTMENT OF REVENUE COLLECT THE FEE ON BEHALF OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSIGN ANY UNPAID FEES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; PROVIDING THAT A LIEN MAY BE PLACED ON A WATER RIGHT IF THE FEE IS NOT PAID AFTER COLLECTION EFFORTS; ESTABLISHING A WATER ADJUDICATION ACCOUNT; ~~ESTABLISHING A STATUTORY APPROPRIATION~~ THE AMOUNT OF REVENUE ALLOCATED EACH YEAR FROM THE ACCOUNT; PROVIDING THAT THE FEE MAY NOT BE ASSESSED ONCE \$31 MILLION HAS BEEN DEPOSITED IN THE ADJUDICATION ACCOUNT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE WATER COURT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND THE APPLICABLE LEGISLATIVE APPROPRIATION SUBCOMMITTEES; PROVIDING THE ~~BASIS~~ PROCESS FOR ~~REQUIRING~~ EXAMINATION OF ~~IRRIGATION~~ CLAIMS IN VERIFIED BASINS PRIOR TO THE ISSUANCE OF A FINAL DECREE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, ~~47-7-502~~, 85-2-231, AND 85-2-237, MCA; AN PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Findings -- purpose.** ~~(1) Montana's water is critical to economic development and the economic stability of its citizens. Therefore, it is urgent that Montana's water rights be~~

1 adjudicated and quantified in a timely and accurate manner.

2 ~~—— (2) The department and the water court must be accountable to the water users of Montana and are~~
3 ~~responsible for completing the adjudication in a timely and accurate manner.~~

4 ~~—— (3) The completion of Montana's water adjudication is critical to the future of our state. Water users who~~
5 ~~filed their water right claims, pursuant to law, have the right to have their water rights quantified and made part~~
6 ~~of a decree. As water use and demands for water increase, it is imperative that water users have the option of~~
7 ~~enforcing their decree as a tool to help manage water in their area.~~

8 ~~—— (4) The department's process for evaluating claims was changed from a verification process to an~~
9 ~~examination process. The examination process is conducted pursuant to rules adopted by the Montana~~
10 ~~supreme court. For those basins that were verified rather than examined, it is necessary that the irrigation claims~~
11 ~~be reexamined using rules approved by the supreme court.~~

12 (5)(1) The purpose of [sections 1 through 10] is to generate revenue to adequately fund Montana's
13 water adjudication program to:

14 (a) complete claims examination and the initial decree phase;

15 (b) reexamine all irrigation claims in basins that were verified and were not subject to the supreme court
16 examination rules WHEN THE WATER COURT HAS RECEIVED A PETITION AND ISSUED AN ORDER PURSUANT TO [SECTION
17 9] OR THE WATER COURT HAS ISSUED AN ORDER ON ITS OWN INITIATIVE; and

18 (c) ensure that the product of the adjudication is ~~accurate~~ ENFORCEABLE decrees.

19 (6)(2) With adequate funding, it is realistic and feasible for the department to complete claims
20 examination and reexamination of verified basins FOR WHICH THE WATER COURT HAS RECEIVED A PETITION AND
21 ISSUED AN ORDER PURSUANT TO [SECTION 9] OR THE WATER COURT HAS ISSUED AN ORDER ON ITS OWN INITIATIVE by
22 June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary
23 decree by June 30, 2020, for all basins in Montana.

24 (7)(3) It is essential to preserve the trust that the water users of Montana have placed in the legislature
25 by ensuring that the revenue generated by the water adjudication fee established in [section 5] is used only for
26 the purpose of adjudicating Montana's water rights.

27
28 NEW SECTION. Section 2. Benchmarks -- action taken if not met. (1) The completion of initial
29 claims examination is of a higher priority than reexamination of claims that were subject to the verification
30 process unless the chief water judge issues an order making reexamination a higher priority, as provided in

1 subsection (3)(b).

2 (2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must
3 be examined. There are approximately ~~18,800 irrigation~~ 98,000 claims that were verified that ~~must~~ MAY be
4 reexamined using the supreme court examination rules IF THE WATER COURT RECEIVES A PETITION AND ISSUES AN
5 ORDER AS PROVIDED IN [SECTION 9] OR THE WATER COURT ISSUES AN ORDER ON ITS OWN INITIATIVE.

6 (3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination
7 by the department.

8 (b) The chief water judge has the authority to order that reexamination be completed for a certain basin
9 in a higher priority than claims examination. If the chief water judge issues an order requiring the department
10 to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted
11 against the amount of claims that the department is required to examine for that period.

12 (4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the
13 benchmarks are not met, the fee contained in [section 5] that is attached to a water right for the purpose of
14 funding the adjudication may not be assessed the following even-numbered year. All claims must be examined
15 by June 30, 2015.

16 (b) The cumulative benchmarks are as follows:

17 Date	Total Number of	Total Number of
18	Claims Examined	Claims Reexamined
19 December 31, 2006	10,000 <u>8,000</u>	0
20 December 31, 2008	30,650 <u>19,000</u>	0
21 December 31, 2010	51,300 <u>31,000</u>	0
22 December 31, 2012	57,000 <u>44,000</u>	7,140
23 June 30, 2015	<u>57,000</u>	18,800

24

25 NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 10], the following
26 definitions apply:

27 (1) "Calculated volume" means the feasible volume given the flow rate and period of use.

28 (2) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

29 (3) "Water right" means a legal right to the beneficial use of water as recorded in the centralized water
30 recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder

River declaration, statement of claim, stockwater permit, temporary provisional permit, OR 1962 to 1973 ground water filings as recorded with the department; or ~~water reservation~~ THAT PORTION OF A WATER RESERVATION THAT HAS BEEN PUT TO BENEFICIAL USE. THIS DEFINITION APPLIES ONLY TO THE USE OF THE TERM FOR THE PURPOSES OF ASSESSING THE FEE AND [SECTIONS 1 THROUGH 10].

NEW SECTION. Section 4. Owner. (1) For the purposes of giving notice or imposing a fee, as provided for in [section 5], "owner", as used in [sections 5 and 6] and this section, means the first enumerated entity on a water right.

(2) The owner is responsible for collecting the proportionate share of any fee from the other entities enumerated on the water right.

NEW SECTION. Section 5. Water adjudication fees -- exceptions. (1) (a) Except as provided in subsection (1)(c), a water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights.

(b) Except as provided in [section 2], [section 7], and subsections (1)(c) and (10) of this section, an owner shall pay a biennial fee for the purpose of funding Montana's water adjudication based on the fees established in subsections (4) through (7) of this section.

(c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and aboriginal claims to water.

(2) The water adjudication fee is due on January 31 of even-numbered years. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) (a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual cost of collecting the water adjudication fee.

(b) The department of revenue may not withhold more than 5% of the revenue generated.

(4) (a) An owner for the purposes described in subsections (4)(b) through (4)(f) shall pay according to a graduated scale. The number of water rights for which a fee must be paid on a per purpose basis is capped at 20 water rights a person for each graduated level.

(b) For a commercial water right with a claimed or calculated volume that is:

(i) 0 acre feet to 100 acre feet, the fee is \$20;

(ii) greater than 100 acre feet and less than or equal to 5,000 acre feet, the fee is \$1,000; and

1 (iii) greater than 5,000 acre feet, the fee is \$2,000.

2 (c) For an industrial water right with a claimed or calculated volume that is:

3 (i) 0 acre feet to 1,000 acre feet, the fee is \$20;

4 (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

5 (iii) greater than 4,000 acre feet, the fee is \$2,000.

6 (d) For a mining water right with a claimed or calculated volume that is:

7 (i) 0 acre feet to 1,000 acre feet, the fee is \$20;

8 (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

9 (iii) greater than 4,000 acre feet, the fee is \$2,000.

10 (e) For a municipal water right with a claimed or calculated volume that is:

11 (i) 0 acre feet to 1,000 acre feet, the fee is \$20;

12 (ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

13 (iii) greater than 4,000 acre feet, the fee is \$2,000.

14 (f) For a power generation water right, both consumptive and nonconsumptive, with a claimed or
15 calculated volume that is:

16 (i) 0 acre feet to 100,000 acre feet, the fee is \$20;

17 (ii) greater than 100,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

18 (iii) greater than 1 million acre feet, the fee is \$2,000.

19 (5) Except for instream flow water rights used for IRRIGATION PURPOSES OR FOR the purposes identified
20 in subsection (4), an instream flow water right or an instream flow water reservation, with a claimed or calculated
21 volume that is:

22 (a) 0 acre feet to 50,000 acre feet, the fee is \$20;

23 (b) greater than 50,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

24 (c) greater than 1 million acre feet, the fee is \$2,000.

25 (6) The fee for an irrigation water right or irrigation claim that is part of an irrigation district, ditch
26 company, canal company, irrigation project, water user's association, or other organized group with the purpose
27 of allocating irrigation water is \$20 a user, with the fee capped at 40 users. The fee must be paid by the user.
28 If an irrigation district, ditch company, or water user's association has more than 40 users, the fee may not
29 exceed \$800 and must be split equally among the users.

30 (7) The fee for all water rights that are not subject to subsections (4) through (6) is \$20. The fee is

1 capped at 20 water rights a person for purposes that are not addressed in subsections (4) through (6).

2 (8) The fees established in subsections (4) through (7) apply to all water rights on record with the
3 department that are not withdrawn; OR terminated, ~~or otherwise abandoned~~.

4 (9) A person may file an administrative appeal with the department to contest the total amount of the
5 fee assessed against the person or a fee imposed based on incorrect ownership records.

6 (10) Fees authorized in this section may not be assessed after June 30, 2014.

7
8 **NEW SECTION. Section 6. Debt collection.** If the owner of a water right does not pay the fee after
9 receiving an initial bill statement and one reminder bill statement:

10 (1) the department shall turn over the debt to the department of revenue for collection pursuant to Title
11 17, chapter 4; and

12 (2) if efforts to collect the debt are not successful, the department of revenue may file a lien against the
13 water right in the county where the water is put to beneficial use AFTER NOTIFYING EACH ENTITY ENUMERATED ON
14 THE WATER RIGHT.

15
16 **NEW SECTION. Section 7. Water adjudication account.** (1) There is a water adjudication account
17 within the state special revenue fund created in 17-2-102.

18 (2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is ~~statutorily~~
19 ~~appropriated, as provided in 17-7-502,~~ ALLOCATED to the department and the water court up to \$2.6 million, plus
20 the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water
21 adjudication account for the sole purpose of funding the water adjudication program. THESE FUNDS MAY NOT BE
22 USED FOR THE PURPOSE OF UPDATING OR MAINTAINING A COMPUTER DATABASE.

23 (b) For the period beginning July 1, 2015, and ending June 30, 2020, there is ~~statutorily appropriated,~~
24 ~~as provided in 17-7-502,~~ ALLOCATED to the department and the water court up to \$1 million, plus the approved
25 inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole
26 purpose of funding the water adjudication program.

27 (C) THE ALLOCATIONS IN SUBSECTIONS (2)(A) AND (2)(B) ARE SUBJECT TO APPROPRIATION BY THE LEGISLATURE.

28 (3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication
29 account from the fee provided for in [section 5] may not exceed \$31 million.

30 (b) If federal funds are appropriated for the purposes of [sections 1 through 10], the maximum amount

that may be deposited in the account must be reduced by the amount of federal funds appropriated.

(c) Once revenue generated from the fees provided for in [section 5] and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.

(4) Interest and income earnings on the water adjudication account must be deposited in the account.

(5) Revenue remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

NEW SECTION. Section 8. Reporting requirements. The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

(a) the progress of the adjudication; and

(b) the total revenue generated by the fees established in [section 5] and deposited in the account provided for in [section 7];

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money, state special revenue funds, and the ~~statutorily appropriated~~ ALLOCATED fee revenue.

NEW SECTION. Section 9. Examination of irrigation claims in verified basins. (1) ~~The department shall examine all irrigation claims in basins that were verified rather than examined.~~

~~———— (2) Only irrigation claims are subject to the reexamination requirements because:~~

~~———— (a) a majority of claims in the verified basins are irrigation claims;~~

~~———— (b) when the supreme court examination rules were adopted, irrigation claims were subject to the biggest change from the verification procedure; and~~

~~———— (c) in general, the irrigation claims claim the largest amount of water in a basin.~~ AT ANY TIME PRIOR TO THE ISSUANCE OF A FINAL DECREE, IN BASINS THAT WERE EVALUATED USING THE VERIFICATION PROCESS RATHER THAN THE EXAMINATION PROCESS, THE OWNERS OF WATER RIGHTS IN THE BASIN OR A SPECIFIED AREA IN THE BASIN MAY PETITION THE WATER COURT TO EXAMINE CLAIMS IN THE BASIN OR AN AREA IN THE BASIN PURSUANT TO THE SUPREME COURT RULES.

(2) THE OWNERS OF AT LEAST 15% OF THE NUMBER OF WATER RIGHTS AFFECTED BY THE PROPOSED REEXAMINATION SHALL SIGN THE PETITION.

1 (3) AT A MINIMUM, THE PETITION MUST PROVIDE:

2 (A) THE SPECIFIC WATER RIGHT PURPOSE OR WATER RIGHT PURPOSES TO BE EXAMINED; AND

3 (B) THE ELEMENTS TO BE EXAMINED.

4 (4) (A) THE WATER JUDGE SHALL EVALUATE EACH PETITION AND DETERMINE IF REEXAMINATION IS NECESSARY
5 TO PROVIDE GREATER ACCURACY TO THE ADJUDICATION.

6 (B) THE WATER JUDGE MAY REQUEST PUBLIC COMMENT ON THE PETITION.

7 (5) IF THE WATER JUDGE DETERMINES REEXAMINATION SHOULD BE CONDUCTED, THE WATER JUDGE SHALL ISSUE
8 AN ORDER THAT PROVIDES:

9 (A) WHAT WATER RIGHT PURPOSE OR WATER RIGHT PURPOSES MUST BE EXAMINED BY THE DEPARTMENT;

10 (B) THE ELEMENTS TO BE EXAMINED;

11 (C) FINAL DISPOSITION OF THE REEXAMINATION INFORMATION DEVELOPED BY THE DEPARTMENT; AND

12 (D) THE TIMEFRAME IN WHICH THE REEXAMINATION MUST BE COMPLETED.

13 (6) THE WATER COURT MAY ISSUE AN ORDER REQUIRING REEXAMINATION ON ITS OWN INITIATIVE. THE ORDER
14 MUST PROVIDE THE INFORMATION CONTAINED IN SUBSECTION (5).

15 (7) UPON RECEIPT OF THE REEXAMINATION INFORMATION FROM THE DEPARTMENT, THE WATER COURT SHALL
16 NOTIFY THE USERS IN THE BASIN OR THE SPECIFIED AREA IN THE BASIN IDENTIFIED IN THE PETITION OF THE FINAL RESULTS
17 OF THE REEXAMINATION AND SHALL NOTIFY THEM REGARDING FURTHER STEPS OR ACTIONS BEING TAKEN AS A RESULT
18 OF THE REEXAMINATION.

19 (8) ANY ACTIONS TAKEN AS A RESULT OF THE REEXAMINATION MUST BE CONDUCTED IN ACCORDANCE WITH THIS
20 PART.

21
22 NEW SECTION. Section 10. Rulemaking authority. The department may adopt rules for the purpose
23 of implementing [sections 1 through 10].

24
25 **Section 11.** Section 15-1-216, MCA, is amended to read:

26 **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions --**
27 **applicability -- exceptions.** (1) (a) A person who fails to file a required tax return or other report with the
28 department by the due date, including any extension of time, of the return or report must be assessed a late filing
29 penalty of \$50 or the amount of the tax due, whichever is less.

30 (b) A person who purposely fails to file a required return, statement, or other report must be assessed

an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 and [section 5].

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law."

~~Section 12. Section 17-7-502, MCA, is amended to read:~~

~~"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.~~

~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:~~

~~(a) The law containing the statutory authority must be listed in subsection (3).~~

~~(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.~~

~~(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612;~~

~~23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623;
53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313;
77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; section 7; 87-1-513; 90-3-1003; 90-6-710; and
90-9-306.~~

~~———— (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion
of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.
481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003;
the inclusion of 2-15-151 terminates June 30, 2005.)"~~

Section 12. Section 85-2-231, MCA, is amended to read:

"85-2-231. Temporary preliminary and preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

(6) The department shall examine all irrigation claims in basins that were verified rather than examined AS ORDERED BY THE WATER COURT. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims."

Section 13. Section 85-2-237, MCA, is amended to read:

"85-2-237. Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3); or

(c) for basins that were verified and not examined FOR WHICH THE WATER COURT HAS RECEIVED A PETITION AND HAS DETERMINED THAT EXAMINATION IS NECESSARY AS PROVIDED IN [SECTION 9] OR THE WATER COURT HAS ISSUED AN ORDER FOR REEXAMINATION ON ITS OWN INITIATIVE.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was

1 entered.

2 (b) A person may not raise an objection to a matter in a reopened decree if the person was a party to
3 the matter when the matter was previously litigated and resolved as the result of the previous objection process,
4 unless the objection is allowed for any of the following reasons:

5 (i) mistake, inadvertence, surprise, or excusable neglect;

6 (ii) newly discovered evidence that by due diligence could not have been discovered in time to move
7 for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

8 (iii) fraud, misrepresentation, or other misconduct of an adverse party;

9 (iv) the judgment is void;

10 (v) any other reason justifying relief from the operation of the judgment.

11 (c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

12 (3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and
13 review of a decree or decrees to the department and to the persons entitled to receive service of notice under
14 85-2-232(1).

15 (4) Notice of the reopening and review of a preliminary or final decree must also be published at least
16 once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water
17 division or divisions in which the decreed basin is located.

18 (5) ~~No~~ An objection may not cause a reopening and review of a claim unless the objection is filed with
19 the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of
20 time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application
21 for extension is made within the original 180-day period or any extension of it.

22 (6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after
23 further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter
24 for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be
25 conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may
26 be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana
27 Rules of Civil Procedure.

28 (7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from
29 the evidence, including dismissal of the objection or modification of the portion of the decree describing the
30 contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

(10) An order requiring the department to examine a basin that was initially verified is limited to ~~only the irrigation~~ TYPES OF claims in the basin THAT WERE IDENTIFIED IN THE PETITION AS PROVIDED IN [SECTION 9] OR THE TYPES OF CLAIMS IDENTIFIED IN AN ORDER THAT THE WATER COURT ISSUED ON ITS OWN INITIATIVE."

NEW SECTION. Section 14. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 10].

NEW SECTION. Section 15. Contingent voidness. If at least \$2 million is not appropriated in a line item for each fiscal year from state sources other than the water adjudication account provided for in [section 7], for the purposes of funding Montana's water adjudication program, then [this act] is void.

NEW SECTION. Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 17. Effective date. [This act] is effective July 1, 2005.

NEW SECTION. Section 18. Termination. [This act] terminates June 30, 2020.

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